



## General

### Guideline Title

Practice parameter for child and adolescent forensic evaluations.

### Bibliographic Source(s)

Kraus LJ, Thomas CR, Bukstein OG, Walter HJ, Benson RS, Chrisman A, Farchione TR, Hamilton J, Keable H, Kinlan J, Schoettle U, Siegel M, Stock S, Ptakowski KK, Medicus J. Practice parameter for child and adolescent forensic evaluations. *J Am Acad Child Adolesc Psychiatry*. 2011 Dec;50(12):1299-312. [31 references] [PubMed](#)

### Guideline Status

This is the current release of the guideline.

## Recommendations

### Major Recommendations

Principle 1. Clinicians who provide mental health treatment for children and adolescents should clarify their role if those children are involved in legal proceedings.

A professional who has, or intends to develop, a treatment relationship with a child, adolescent, and the family has responsibilities to the patient that will conflict with the responsibilities a forensic evaluator has to an attorney or judge who has requested an evaluation. If a therapist who has established a treatment relationship with a child assumes a forensic function, his or her role may become confused and the therapeutic relationship could be damaged. At the same time, this role confusion may interfere with the objective evaluation requested by the court. Therapists are less likely to question the patient's narrative or insist on corroborating sources. Efforts to offer helpful testimony may result in disclosure of confidences that will embarrass the patient or the family. Except in unusual circumstances (such as in rural areas in which no forensic evaluators are available), clinicians in a treatment role should not serve in a forensic role for the same child or adolescent.

Despite efforts to avoid the legal arena, a treating psychiatrist may be court ordered, subpoenaed, or asked by the patient to testify on a particular question. The treating psychiatrist should always contact the patient or the patient's parents regarding any requests for information about the patient. In some states, testimony or records cannot be provided without the patient's consent. Before releasing records, the patient or the patient's parent(s) should be given the opportunity to object to the subpoena. If the patient's objection to the subpoena is overruled, a court order may be issued for the records or the clinician's presence for testimony. Only under a court order can a professional providing treatment testify without written permission of the parent and minor (depending on the youth's age and the state's legal code).

If asked to testify, the treating psychiatrist may find it useful to review any requests with an attorney familiar with the local laws to learn options in handling the request, and how best to protect the evaluator and the patient. If treatment is being provided in a clinic, hospital, or agency, the

treating psychiatrist should inform the legal counsel of the facility because the records belong to the facility, not to the individual psychiatrist. The treating psychiatrist should consider retaining an attorney if there are any questions about his or her appropriate role.

All states require a response to a court order. Some states may not require compliance with a subpoena request, but a response is always mandatory. The response may be an objection to the subpoena or an attorney may file a motion to quash the subpoena. Failure to respond altogether may leave the mental health professional open to a contempt-of-court action.

The request for testimony may ask that the forensic evaluator provide information through a report, affidavit, deposition, and/or court testimony. A deposition is given under oath, as is court testimony. A review of the subpoena would clarify whether the psychiatrist is being called as a fact witness or expert witness. The clinical formulation and diagnosis, the treatment provided, and the medical record are facts. Estimates of the patient's prognosis or opinions on the forensic issue before the court are examples of expert testimony that may be requested and are distinct from fact. If the psychiatrist has not conducted a forensic evaluation, there is no obligation to have a forensic opinion. For example, the clinician who is treating a child involved in a child custody dispute is under no obligation to form an opinion as to what custodial arrangement is in the best interests of the child. A thorough custody evaluation is necessary to form an expert opinion on custody or visitation.

Principle 2. The role of the forensic evaluator is distinct from that of treatment provider and all involved with the child must understand and respect the distinction between these functions.

The forensic psychiatric evaluation of a youth is inherently different from a traditional clinical psychiatric evaluation for treatment purposes. The forensic evaluator's role is to assist the court in answering a legal question by providing information. The typical aims of the child forensic evaluation are to identify the stated reasons and factors leading to the referral; to obtain an accurate diagnostic picture of the youth's developmental functioning and the nature and extent of the youth's behavioral difficulties, functional impairment, and/or subjective distress; to identify potential individual, family, school, peer, or other environmental factors that may account for problems that have resulted in the legal involvement or claimed impairment or distress; and to rely as much as possible on research and scientific studies rather than subjective hunches in coming to an opinion (see Table 1 in the original guideline document that presents more information on differences between clinical and forensic evaluations).

In the first meeting or telephone contact with the party requesting the forensic evaluation (attorney for the defense, the state or plaintiff, or the court), the forensic evaluator must identify potential role conflicts, boundaries, and expectations of the proposed consulting relationship to ensure that the evaluator will be able to complete an objective and comprehensive evaluation. The traditional doctor–patient relationship is not developed between the forensic evaluator and the youth being evaluated. The forensic evaluator's fiduciary duty is to the court or retaining agency (e.g., law firm, school department); the treating mental health professional has a fiduciary duty to the person being evaluated.

At the onset of the interview, the evaluator should review the following with the child or adolescent and parents: the purpose of the evaluation; the process (for instance, a solo evaluator or a team); agency of the evaluator; whether the evaluation is being electronically recorded; what will happen to the information obtained (e.g., verbal or written report); and that the evaluation is not for treatment purposes. The examiner should provide warnings regarding the lack of confidentiality to the parent and to the youth (according to the youth's developmental maturity). Although not legally required, it is advisable to obtain a youth's assent to the interview process.

Privacy refers to a person's right to keep certain information protected from public attention or knowledge. Confidentiality is a form of privacy that creates the ethical and legal obligation for mental health professionals to not disclose information communicated by the patients or people being evaluated. *Privilege* is also a form of privacy; it refers to the legal rule that protects certain information from disclosure in court. An evaluated person can waive his or her right to privilege. The waiver may be implied if there is a court order because the purpose of the evaluation is for the presentation of material to the court and the involved attorneys. Nonetheless, a clear explanation of confidentiality to the evaluated person and then allowing the person to explain what he or she understands is ideal. If there is a court order, although there is no need for an evaluated person to sign an authorization to release information, it may be helpful for the person to sign a statement that he or she understands where the information will be sent. If there is no court order, it is advisable for the evaluator to ask the evaluated person to sign an authorization indicating where the information will be sent. It is unclear the extent to which the Health Insurance Portability and Accountability Act applies to forensic evaluations.

Principle 3. The forensic evaluator should have adequate education, training, or experience.

To perform a competent forensic evaluation within the context of court involvement, one must have a minimum set of clinical training and experience, knowledge, requisite skills, and, if possible, forensic supervisory training or experience. In addition to child and adolescent psychiatrists, many child forensic evaluations are performed by adult psychiatrists, psychologists, social workers, psychiatric nurses, and other clinicians. Most psychiatrists who perform forensic evaluations of juveniles do this in addition to their standard clinical work. Regardless of formal training, the forensic evaluator should be knowledgeable of normal growth and development and child psychopathology. A competent assessment will reflect knowledge of the current literature. Prior clinical or forensic experience in the area being assessed is helpful. The American Board of Psychiatry and Neurology offers certification in forensic psychiatry.

Principle 4. The forensic evaluator should have an understanding of the pertinent legal system and system of care.

Effective forensic consultation to family, juvenile, civil, and criminal courts requires knowledge of the organizational structure of the courts and related agencies, differences between the courts and clinical settings, the legal process for juveniles, how this differs from adults, and other legal issues such as levels of proof, testimony, and court proceedings. Attempting to complete a forensic evaluation within the juvenile court without an understanding of the system is a risk to the evaluator and the youth being evaluated.

In addition to knowing the operations of the judicial system, it is important to understand the court's interface with other involved agencies. The forensic evaluator should have an understanding of existing child welfare, educational, medical, and mental health care systems within the area and supported by the court within the state and out of the state.

When traveling to another state to conduct a forensic evaluation, it is important to review the laws of that state regarding professional licensure. Each state has its own rules and regulations regarding the licensure of professionals who conduct evaluations and testify. It might be necessary to obtain some form of temporary licensure to conduct an evaluation in another state.

Principle 5. The forensic evaluator should clarify the question being asked by the person or agency making the referral.

Sometimes, the forensic evaluator avoids answering or forgets to answer the question that was originally posed by the referral source. It is also a common mistake for a novice forensic evaluator to include more conclusions and recommendations in the report than was asked for. This is not helpful to the readers of the evaluation and may result in conflict regarding the evaluation and, at times, confusion for the court. Ordinarily, only the questions asked within the court order or in the letter from the referring attorney should be addressed. If additional questions are posed by the court or one of the attorneys, the evaluator may request that they be written, preferably within a court order or a letter, to minimize any confusion of the evaluator's role.

The forensic evaluator may need to help the referral source formulate the question in a clear manner. For example, in a criminal case, questions might include: "What was the defendant's state of mind at the time of the alleged crime with respect to insanity or mitigation?," "What was the defendant's state of mind at the time of his interrogation by investigators with respect to his competency to waive his Miranda rights?," or "What is the defendant's state of mind at the present time with respect to his competency to stand trial?" In a medical malpractice case, questions might include: "Did the practitioner follow the standard of care?," "Was the plaintiff injured by what the practitioner did?," or "Will the plaintiff need treatment in the future?" In a child custody dispute, the court may want the evaluator to assess the child's relationship with both parents and make specific recommendations regarding custody and visitation arrangements. Conversely, the court may simply want an evaluation of the psychosocial strengths and weaknesses of the parents, with no conclusions or recommendations at all regarding the ultimate issue, i.e., the custody and visitation arrangements. It is essential to clarify the questions being posed before starting the forensic evaluation.

Principle 6. The forensic evaluator should know and understand the applicable legal test and standard of proof for the question being evaluated and focus the evaluation on those issues pertinent to that test.

After the forensic evaluator has clarified the question or questions posed by the referral source, the evaluator should make sure he or she understands the legal test for that particular question or issue. For example, if the question pertains to competency, the defendant's present mental state, it is important to know the criteria for competency in the relevant jurisdiction.

If the question pertains to a waiver from a juvenile court to a criminal court, it is important to know the statutory or precedential criteria for a waiver that the court must consider. For instance, depending on the jurisdiction, the forensic evaluator may be asked to provide a professional opinion on a youth's potential for dangerousness, the risk of future criminal behavior, his or her amenability to treatment, and what level of restrictive environment is necessary to assist in treatment and to protect the constituents of the state.

If the task is to conduct a child custody evaluation, the forensic evaluator may need to address a range of issues including factors related to the parents (e.g., parenting skills, physical health, mental health, substance abuse, previous and current involvement in the child's care, and willingness to collaborate with the other parent in raising the child), factors related to the child (e.g., mental health, attachment to each parent, preferences regarding his or her living arrangements), and factors regarding the family (e.g., history of domestic violence, allegations of abuse, allegations of parental alienation).

In these examples, the particular factors to consider may depend on federal law (if the case is in federal court), state law (if the case is in a state court), or simply local practice. A forensic evaluator is not expected to know the important criteria or factors for every type of forensic evaluation that might arise. When in doubt, the forensic evaluator may ask the referral source for an explanation of the factors that apply to the case being considered. This should be clarified before starting the forensic evaluation.

There are several standards of proof or levels of certainty that must be established for a judicial decision to go a particular way. The least exacting level of certainty is "reasonable suspicion." In clinical practice, that may be a sufficient level of certainty to report a suspected instance of child

abuse. In civil cases, the side prevails that establishes a "preponderance of the evidence." This can be expressed quantitatively as being 51% certain. In some cases that involve psychiatric evidence, the level of certainty is "clear and convincing proof," which is proof necessary to persuade by a substantial margin, which is more than a bare preponderance. For example, the proof that child abuse has occurred or the basis for terminating parental rights must be clear and convincing. Criminal cases require proof that is "beyond a reasonable doubt." When physicians testify in court, they frequently are asked if their opinions are given with "a reasonable degree of medical certainty." One study proposed that reasonable medical certainty is a level of certainty equivalent to what a physician uses when making a diagnosis and starting treatment. The implication is that the degree of certainty would depend on the clinical situation.

Principle 7. The forensic evaluator should determine the amount of time, collateral information, and resources that are necessary to complete the evaluation.

Focusing on the forensic question and providing information in a manner that is most helpful to the court require a systematic approach. The forensic evaluator must not jeopardize the evaluation by minimizing the need for time to complete the evaluation properly or to collect, review, and evaluate all pertinent sources of information.

Many times, attorneys will contact forensic experts shortly before a court hearing. In those situations, it is imperative that the forensic evaluator make clear the time necessary to do a proper assessment and suggest that a continuance or delay be sought. It may be necessary to conduct several interviews with the youth. The evaluator should not shorten the time necessary to complete the evaluation. If feeling rushed by an attorney, the evaluator may respond in writing regarding the need for increased time. It may also be advisable to communicate with the judge regarding the need for additional time. It is typically helpful to clarify the various components of the evaluation.

It is also important for the forensic evaluator to review previously completed reports, summaries, and test results before beginning the evaluation. The forensic evaluator must determine what additional records are necessary, who should be interviewed, and what further tests or consultations are needed for completion of the evaluation. In some cases this can be done before the interview; in others, issues may arise during the interviews that highlight areas that need to be explored with further outside data. If a forensic evaluator does not have access to all the relevant data, this does not preclude arriving at conclusions. However, a caveat must be stated that the opinions are based on the data available and that the opinion of the examiner could change if additional data were provided.

The forensic evaluator should approach each evaluation with sensitivity to the youth's unique developmental needs and vulnerabilities. The amount of records and collateral information that should be obtained will depend on the nature of the evaluation and the reliability of information already present. For example, in evaluating an adolescent, pediatric records from the preschool period may not be very important in assessing the evaluated youth's current competency to stand trial but may be crucial in special education litigation with a school system involving the question of whether a youth has autism.

It typically takes a lot of effort to obtain comprehensive collateral information including police reports, educational reports, prior mental health history, medical history, social service evaluations, and prior court hearings. If all the collateral material has not been received and reviewed, the forensic evaluator may begin the evaluation and then determine what else is necessary. However, if important records or collateral information have not been provided, the evaluator should send a written request for the required information. If, for some reason, a party is refusing to make this information available, because of a lack of consent or another reason, the person or agency that made the referral needs to be made aware of this.

Depending on the circumstances, the forensic evaluator may prefer to receive written records of previous psychiatric treatment and/or speak with the clinicians involved in the previous treatment. For example, in conducting some evaluations, it may be sufficient or even preferable to talk to the evaluated person's former therapist rather than review the written records. In taking this approach, it is possible to protect the past treatment records from being exposed unnecessarily in court.

Principle 8. The forensic evaluator should carefully consider the impact of the presence of parents or of the youth's attorney during the interview.

Clarification of who will be attending the assessment is important. If others will be present, the evaluator should recommend guidelines for their conduct and confidentiality. Any conflicts will be addressed by the court.

The youth's attorney may want to be present at the evaluation. This is not an uncommon request, and in some states the mental health code and laws require the presence of the youth's attorney. The attorney may agree to sit out of direct sight (e.g., to the side of the youth) and not participate unless invited to do so by the evaluator. All observed communication, verbal or nonverbal, between the attorney and the youth will be considered data in formulating the opinion.

It is extremely uncommon that a court would require a parent to be present. Having them present for at least part of the evaluation for obtaining historical information, assessing the interaction with the parent, and at times assisting in the evaluation can be helpful. For example, youth being evaluated within juvenile court at times can be resistant and quite guarded in the evaluation process. More often than not, the assistance of a parent

to encourage cooperation is helpful. Once accomplished, it is beneficial to interview the youth alone. With custody evaluations, it helps for the evaluator to spend some time assessing children with each parent so there can be a better appreciation of the relationship with each parent.

Principle 9. The forensic evaluator should be competent in conducting evaluations in a culturally sensitive manner.

Minority youth are over-represented in foster care and the juvenile justice system. This may reflect, in part, higher rates of mental illness in these populations and a lack of access to treatment for these conditions. Often families seek treatment only under pressure from schools or the court, resulting in higher rates of involuntary commitment and premature termination.

A culturally competent forensic evaluator will be sensitive to and accepting of cultural differences. They will acquire knowledge about the culture of the evaluated youth and the management of similar forensic issues in the justice system of that culture. If the evaluated youth or the parents are not fluent in English, interpreters who are familiar with psychiatric and legal terminology should be readily available. The child should not be expected to serve as an interpreter. The evaluator should inquire about an immigrant family's experience with the courts in their home nation. Adverse experience may influence their attitude about the current problem.

It may be necessary to consider cultural factors in recommendations for a specific case. In a custody evaluation, the examiner may wish to consider, among other factors, one parent's willingness to support the child's involvement in the cultural traditions of the other parent. In the disposition of a case in juvenile court, referral to a treatment setting that is culturally competent may increase the likelihood of completing treatment.

Principle 10. The forensic evaluator should consider whether to record the forensic evaluation by audio or video recording.

The American Academy of Psychiatry and the Law (AAPL) created a task force to consider the videotaping of forensic interviews. In 1998, the task force published its findings and concluded, "AAPL does not support a blanket rule of requiring videotaping in all forensic interviews. The Task Force finds the option of videotaping to be an ethically acceptable medical practice."

There are several pros and cons to consider regarding the recording of a forensic interview of a child or adolescent. Advantages of recording the interview include: the record of the evaluation will be accurate and complete, especially compared with handwritten notes; the evaluator can review the recording before preparing the written report and testifying; the electronic record will help clarify any accusations of misinterpretation or misstatement in the forensic report; and the electronic record can be reviewed by individuals who need to see exactly what was stated in the evaluation, including future evaluators, opposing experts, and even the judge and jury at a trial. If the initial forensic interview of the child was properly recorded, it may decrease the number of additional, subsequent interviews. Recording interviews communicates to the attorneys and the court that the evaluator is comfortable with the scrutiny of others, that there is no bias, and is collecting pertinent information in a methodical manner.

Disadvantages of making an electronic record of the forensic interview include: the child or adolescent being evaluated may become anxious or intimidated by the recording device; it may be inconvenient to make an electronic recording in some evaluation settings, such as a cell at a detention center; the recordings that are generated must be stored in a secure manner and be available for duplication when records are requested; and there are legal limitations to record or copy some psychological testing because of copyright issues.

Principle 11. The forensic evaluator should have an understanding of psychological testing and make use of it as appropriate.

Psychological testing is important in some situations, but not in others. For example, in child custody disputes when there are significant allegations and inconsistency in presentation, a comprehensive psychological battery, including tests such as the Minnesota Multiphasic Personality Inventory–2 Restructured Form and the Millon Clinical Multiaxial Inventory–III, can be helpful in further assessing personality, deceptiveness, and defensiveness in the parents. Also, there are tests that help assess the child's relative attachment to and perception of the parents. Achievement tests, cognitive testing, and detailed neuropsychological assessments can be helpful in personal injury cases. The use of specialized psychological tests in assessing juvenile competency to waive Miranda rights and proceed with adjudication may also be of benefit.

Principle 12. The forensic evaluator should be aware of the types of and level of clinical services available and different indications when making treatment or placement recommendations.

Many youth who come to the attention of the court will have treatment and placement needs, and the forensic evaluator may be asked to make recommendations. The goal is to identify the most appropriate evaluation and treatment services that can be provided in the least restrictive manner. The evaluator should also be aware of the research supporting the types of services available. The evaluated youth may present with complex problems (e.g., mental health, substance abuse, sexual offending, setting fires) that will require a high level of security whether in a mental health or a juvenile justice setting. For youth who present a risk of harm to self or others, there may be an urgency to the request for placement recommendations.

The courts will consider the evaluator's recommendations and other information to make a disposition of the case. The court may initiate additional

referrals for mental health and/or substance abuse treatment, outreach and tracking, vocational and life-skills training, educational interventions, parenting education, relapse prevention, and other interventions. The court might order an out-of-home placement into a group home, foster care, in-state or out-of-state residential treatment, or other type of treatment program for an identified period.

Many court-ordered placements are implemented through probation departments, although there may be overlap with the state's department of human services, youth social services, and educational agencies. Implementation of the recommended treatment plan depends on available resources. Some children have health insurance that will pay for some elements of treatment; other youth are referred to treatment provided by the public sector. Some court systems will be able to fund placement in a residential program. Some states have secure residential facilities, but many do not. The few openings in the private sector may prove prohibitively expensive. If a recommendation is made for an out-of-state facility, the evaluator must know whether that state allows for children on probation to be placed out of state.

Principle 13. The forensic evaluator should be prepared to document the findings of the evaluation and the opinions reached in a report.

The initial request for evaluation may specify that the findings of the evaluation will be made in a report and will indicate who should receive a copy of the report. Typically a report ordered by the court would be submitted to the court and both attorneys. At other times, an attorney requesting an evaluation may not want a report but is interested in discussing the findings of the evaluation. When writing a report, the forensic evaluator should remember the audience. The report should not use medical language that would be difficult for the court and others to understand. If specific medical, psychiatric, or psychological terminology is used, it must be defined. The information can be defined in the text or at the bottom of the page. The report should be carefully reviewed for typographic and grammatical errors.

The report should document the source of the referral; the forensic question being addressed; sources of information, including dates, duration, and participants of all interviews and documents reviewed; what was told to the evaluated youth and parents regarding the evaluation, including notice of the limits of confidentiality; what consent or assent was obtained; a summary of pertinent findings, including all data that constitute the basis for the opinion being rendered; the forensic opinion on the questions asked; and the reasoning used in moving from the data to the opinions.

It is important to separate the data section from the opinion section. Some evaluators prefer to place a brief statement of the opinion near the beginning of the report, whereas others prefer not to mention the opinion until after the basis for it is presented. Most forensic evaluators agree that no new data should appear in the opinion section of the report. The forensic evaluator should address all questions posed by the referral source. If specific questions cannot be answered, the evaluator should explain the reason.

In cases where the forensic test is comprised of several factors or prongs, each prong should be addressed separately. For example, in a jurisdiction in which the Dusky formulation is used to test for competency to stand trial, the opinion section should address whether the defendant has sufficient current ability to consult with a lawyer with a reasonable degree of rational understanding, and whether the defendant has a rational and factual understanding of the proceedings. A reference section at the end of the report makes the report somewhat cumbersome and difficult to read; however, references may be needed and have specific relevance to the question being answered.

Principle 14. The forensic evaluator should be prepared to testify in depositions and in court.

Testifying can be provoke anxiety. There is much written about the process that can add to the witness's comfort. The forensic evaluator's skills improve through observing the testimony of other experts and repeated personal experiences in court. The opportunity to participate in didactic training and have practical experience in a supervisory setting is recommended.

Before appearing in court or at a deposition, the evaluator should carefully review the case file, the report, and documents that have information critical to the case. It is acceptable to meet with an attorney before the deposition or court testimony, but this meeting should not change the forensic evaluator's opinion.

Appropriate professional attire is necessary for court appearances. An expert should usually direct responses to the finder of fact (i.e., the judge in a bench trial or the jury in a jury trial). The setting may make it difficult to face the judge from a witness stand, but an attempt should be made to focus in the appropriate direction. All responses should be delivered verbally because the testimony is transcribed. Do not nod in response or use utterances such as "uh-huh."

Responses should be well thought out. In cross-examination, if pressured for quick responses, the evaluator should not follow this lead but rather take his or her time. The evaluator should respond directly to the questions being asked. If asked a "yes or no" question that requires an elaborate answer, the evaluator should ask to give a detailed answer and let the court determine whether an answer can be explained further. Regardless of how many times a question is asked or how it is framed, the evaluator's response should be consistent. At the same time, there are questions that may be asked that potentially could change an opinion. It is reasonable with these types of questions to respond with a "probability" or a "possibility" type of response. At the same time, when hypothetical questions are being asked, the evaluator should pause before responding to allow counsel to potentially object.

Although court is an adversarial setting, the evaluator should not engage in an argument. The evaluator should listen to the question being asked, pause, think about the question, and then respond. Most forensic evaluators recommend that a witness not respond in an antagonistic or humorous manner. The evaluator should be cautious if more than one question is being asked. The evaluator should ask that a question be repeated if it is not understood.

Depositions take place out of the presence of the judge; because there is no judge to rule on objections, the general rule is for the witness to answer the question even if an objection is made. The judge later will rule on the objection and the admissibility of the answer. However, if the attorney who retained the expert directs the expert not to answer, an answer need not be given. It is important to remember, however, that the retaining attorney's duty is to the client, not to the expert. Situations can arise in depositions where the expert may refuse to answer, even though the retaining attorney does not object. For example, the evaluator may feel the question is overly personal and not relevant. Such questions may involve the evaluator's personal history and income. In most jurisdictions, witnesses need to answer questions regarding fees in the case and the percentage of income derived from forensic work, but not questions about total income. The relevance of personal details often depends on the case: asking an expert whether he or she was sexually molested may be relevant to bias in a case involving sexual abuse of a child, but not relevant in a case involving malpractice for a patient's suicide.

It is useful to keep a record of all cases in which the expert has provided testimony. The Federal Rules of Civil Procedure require that the expert submit a list of all testimony provided in the previous 4 years. Failure to provide such a list will disqualify the expert from testifying. Many state jurisdictions have adopted the federal rules or have developed similar requirements.

Principle 15. The forensic evaluator should consider the pros and cons of whether a child should testify.

In some circumstances, the forensic evaluator may be asked to express an opinion on whether a child should be allowed or required to testify. For instance, the question may relate to the psychological risks and benefits to the child if the child testifies. This may be the issue in a case involving allegations of sexual abuse and the child is expected to testify in the presence of the alleged perpetrator. Usually, there are pros and cons to the child's testifying in such a situation. Advantages include: the child can achieve a sense of accomplishment and mastery by telling in court what he or she experienced or witnessed; and the child may take pride in being part of the legal processes. Disadvantages include: the child may be quite anxious at confronting the alleged perpetrator; testifying may exacerbate psychological symptoms; and the child may feel uncomfortable or embarrassed during cross-examination.

There may be times when a child's testimony is required, even though it is unpleasant for the child. The forensic evaluator may suggest that the court consider alternatives to face-to-face testimony, such as electronically recording the proposed testimony or using closed-circuit video monitoring of the testimony, consistent with local law.

Other considerations for whether a child should testify are a child's competency to testify or the reliability of a child's statements. Competency to testify generally involves the assessment of four factors: understanding the requirement to tell the truth; the ability to accurately perceive events at the time they occurred; the ability to store these thoughts in memory for a period; and the ability to accurately describe these memories in one's own words. Competency to testify may be impaired by the child's normal developmental immaturity, by a developmental delay, or by some form of mental illness. Also, the child's memories could have been distorted by intervening events or by inappropriate repetitive or suggestive questioning.

Principle 16. The forensic evaluator should adhere to the ethical guidelines of his or her respective professional organizations.

The activities of child and adolescent forensic psychiatrists may be governed by the ethical principles of several professional organizations. The American Medical Association publishes and periodically updates the *Code of Medical Ethics*. The American Medical Association also publishes extensive commentary on ethical issues in *Current Opinions with Annotations*, and these discussions sometimes relate to forensic evaluations. The American Psychiatric Association publishes and periodically updates *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*. Occasionally, these annotations relate to forensic psychiatry.

The AACAP publishes and periodically updates the *Code of Ethics*. This document distinguishes clinical and forensic activities as follows: "Some professional responsibilities, however, do not involve the potential treatment needs of a child or adolescent; rather, consultation . . . is requested by, and provided to, societal entities, i.e., schools, social agencies, and juvenile justice systems. In these circumstances, the child and adolescent psychiatrist must, from the outset, clearly delineate the professional's limited role, to both the child or adolescent and the family. Further, the child and adolescent psychiatrist should also note that the professional's primary responsibility for rendering scientifically sound medical opinion may run counter to the preferences or needs of the child."

The AAPL publishes and periodically updates *Ethics Guidelines for the Practice of Forensic Psychiatry*. Some of this document pertains specifically to the forensic evaluation of children and adolescents. For instance, "In custody cases, honesty and objectivity require that all parties be interviewed, if possible, before an opinion is rendered. . . . Any comments on the fitness of a parent who has not been interviewed should be

qualified and the data for the opinion clearly indicated."

The ethical principles for forensic psychiatric evaluations of minors have not been fully developed. Issues that should be considered by professional organizations include assent and consent, susceptibility to suggestive questions, and deference to an authority figure. These issues are more problematic with children and adolescents than with adults.

## Clinical Algorithm(s)

None provided

## Scope

### Disease/Condition(s)

Any condition requiring forensic evaluation of children and adolescents including those requiring assessment relevant to delinquency, child custody, child maltreatment, personal injury, and other court-ordered and noncourt-ordered evaluations

### Guideline Category

Evaluation

### Clinical Specialty

Pediatrics

Psychiatry

Psychology

### Intended Users

Physicians

Psychologists/Non-physician Behavioral Health Clinicians

Social Workers

### Guideline Objective(s)

To provide guidance for child and adolescent psychiatrists conducting forensic evaluations, with broad applicability to other child mental health professionals

### Target Population

Youth younger than 18 years undergoing forensic evaluation

### Interventions and Practices Considered

1. Clarification of the role of clinicians who provide mental health treatment
2. Clarification regarding the differences between forensic evaluator and treatment provider



3. Adequate education, training, and experience of forensic evaluator
4. Understanding of the pertinent legal system and system of care
5. Clarification of the question being asked by referral source
6. Knowledge and understanding of the applicable legal test for the question or issue being evaluated
7. Determination of the amount of time, collateral information, and resources necessary to complete the evaluation
8. Consideration of the impact of parental/attorney presence during the interview
9. Conducting of evaluations in a culturally sensitive manner
10. Consideration of audio or video recording of the interview
11. Appropriate use of psychological testing
12. Knowledge of types and levels of clinical services available
13. Documentation of the findings/opinions made in a report
14. Preparation for testimony in depositions and in court
15. Consideration of the pros/cons of child testimony
16. Adherence to the ethical guidelines of respective professional organizations

## Major Outcomes Considered

Objective and comprehensive diagnostic evaluation with an assessment relevant to delinquency, child custody, child maltreatment, personal injury, and other court-ordered and noncourt-ordered evaluations

## Methodology

### Methods Used to Collect/Select the Evidence

Hand-searches of Published Literature (Primary Sources)

Hand-searches of Published Literature (Secondary Sources)

Searches of Electronic Databases

### Description of Methods Used to Collect/Select the Evidence

The list of references for this Parameter was developed by searching PsycINFO, MEDLINE, Psychological Abstracts, PubMed, Ovid, Lexus-Nexus, and Legal Abstracts; by reviewing the bibliographies of book chapters and review articles; and by asking colleagues from the American Academy of Child and Adolescent Psychiatry (AACAP) Rights and Legal Matters Committee and the AACAP Juvenile Justice Reform Committee for suggested source materials. Search terms included forensic, juvenile, justice, psychiatry, psychology, legal, ethics, competency, custody, divorce, foster care, adoption, abuse, neglect, violence, trial, hearing, adjudication, litigation, waiver, evaluation, and expert witness. The searches covered the period from 1990 through 2009 and yielded about 500 articles.

### Number of Source Documents

Not stated

### Methods Used to Assess the Quality and Strength of the Evidence

Expert Consensus

### Rating Scheme for the Strength of the Evidence

Not applicable

# Methods Used to Analyze the Evidence

Review

## Description of the Methods Used to Analyze the Evidence

Each of the references was reviewed and only the most relevant (i.e., focusing in whole or in part on the issues and techniques specific to forensic evaluations by child and adolescent psychiatrists) were included in this document. Articles and chapters were evaluated on their basis in research findings and if these findings or reports were replicated, if the recommendations were supported by professional groups or a consensus of experts, and consistency with policy positions in other practice standards such as the Guidelines for Child Custody Evaluations in Family Law Proceedings by the American Psychological Association.

## Methods Used to Formulate the Recommendations

Expert Consensus

## Description of Methods Used to Formulate the Recommendations

The American Academy of Child and Adolescent Psychiatry (AACAP) Practice Parameters are developed by the AACAP Committee on Quality Issues (CQI) in accordance with the American Medical Association policy. Parameter development is an iterative process among the primary author(s), the CQI, topic experts, and representatives from multiple constituent groups, including the AACAP membership, relevant AACAP Committees, the AACAP Assembly of Regional Organizations, and the AACAP Council. Details of the Parameter development process can be accessed on the [AACAP Web site](#) . Responsibility for Parameter content and review rests with the author(s), the CQI, the CQI Consensus Group, and the AACAP Council.

The AACAP both develops patient-oriented and clinician-oriented Practice Parameters. Patient-oriented Parameters provide recommendations to guide clinicians toward best assessment and treatment practices. Recommendations are based on the critical appraisal of empirical evidence (when available) and clinical consensus (when not), and are graded according to the strength of the empirical and clinical support. Clinician-oriented Parameters provide clinicians with the information (stated as principles) needed to develop practice-based skills. Although empirical evidence may be available to support certain principles, principles are based primarily on clinical consensus. This Parameter is a clinician-oriented Parameter.

## Rating Scheme for the Strength of the Recommendations

Not applicable

## Cost Analysis

A formal cost analysis was not performed and published cost analyses were not reviewed.

## Method of Guideline Validation

Internal Peer Review

## Description of Method of Guideline Validation

This Parameter was reviewed at the Member Forum at the American Academy of Child and Adolescent Psychiatry (AACAP) Annual Meeting; October 2008.

From September 2010 to May 2011, this Parameter was reviewed by a Consensus Group convened by the Committee on Quality Issues (CQI).

This Practice Parameter was approved by the AACAP Council on August 12, 2011.

# Evidence Supporting the Recommendations

## Type of Evidence Supporting the Recommendations

The type of evidence supporting the recommendations is not specifically stated.

## Benefits/Harms of Implementing the Guideline Recommendations

### Potential Benefits

Appropriate assessment by child and adolescent psychiatrists conducting forensic evaluations

### Potential Harms

Child and adolescent psychiatrists have an important role in the forensic evaluation of youngsters who may have been sexually abused. Because there are typically no physical findings in child sexual abuse and there are no witnesses, the only source of information may be the child's statements to family members, friends, and investigators. It is important to understand how information can be elicited about incidents in a fashion that does not lead or prompt the child in a way that undermines or calls into question the answers or observations.

## Qualifying Statements

### Qualifying Statements

American Academy of Child and Adolescent Psychiatry (AACAP) are developed to assist clinicians in psychiatric decision making. These Parameters are not intended to define the sole standard of care. As such, the Parameters should not be deemed inclusive of all proper methods of care or exclusive of other methods of care directed at obtaining the desired results. The ultimate judgment regarding the care of a particular patient must be made by the clinician in light of all of the circumstances presented by the patient and his or her family, the diagnostic and treatment options available, and available resources.

## Implementation of the Guideline

### Description of Implementation Strategy

An implementation strategy was not provided.

## Institute of Medicine (IOM) National Healthcare Quality Report Categories

### IOM Care Need

Staying Healthy

### IOM Domain

Effectiveness

Patient-centeredness

## Identifying Information and Availability

### Bibliographic Source(s)

Kraus LJ, Thomas CR, Bukstein OG, Walter HJ, Benson RS, Chrisman A, Farchione TR, Hamilton J, Keable H, Kinlan J, Schoettle U, Siegel M, Stock S, Ptakowski KK, Medicus J. Practice parameter for child and adolescent forensic evaluations. *J Am Acad Child Adolesc Psychiatry*. 2011 Dec;50(12):1299-312. [31 references] [PubMed](#)

### Adaptation

Not applicable: The guideline was not adapted from another source.

### Date Released

2011 Dec

### Guideline Developer(s)

American Academy of Child and Adolescent Psychiatry - Medical Specialty Society

### Source(s) of Funding

American Academy of Child and Adolescent Psychiatry

### Guideline Committee

American Academy of Child and Adolescent Psychiatry Committee on Quality Issues (CQI)

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### Financial Disclosures/Conflicts of Interest

Disclosures: Dr. Kraus serves as a forensic consultant to Eli Lilly and Co. and AstraZeneca. Dr. Thomas has no financial relationships to disclose. Dr. Bukstein receives or has received research support, acted as a consultant, and/or served on a speaker's bureau for McNeil Pediatrics and Novartis Pharmaceuticals Corporation. Dr. Walter has no financial relationships to disclose. Disclosures of potential conflicts of interest for all other individuals named earlier are provided on the American Academy of Child and Adolescent Psychiatry (AACAP) Web site on the [Practice](#)

## Guideline Status

This is the current release of the guideline.

## Guideline Availability

Electronic copies: Available from the [American Academy of Adolescent and Child Psychiatry \(AACAP\) Web site](#) .

## Availability of Companion Documents

None available

## Patient Resources

None available

## NGC Status

This NGC summary was completed by ECRI Institute on November 14, 2014.

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